

AG Contract No.: KR04-1550TRN
ADOT ECS File No.: JPA 04-122
Project No.: CM-PEO-0(005)A
Project: 83rd Avenue
Section: Thunderbird Road
TRACS No.: SS524 01C
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF PEORIA

THIS AGREEMENT is entered into 4th February, 2005, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PEORIA, ARIZONA acting by and through its MAYOR and CITY COUNCIL (the "CITY").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State

2. The City is empowered by Arizona Revised Statutes § 48-572 and Peoria City Charter Art. I § 3(15) to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City

3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.

4. Such project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for their approval.

5. The City, in order to obtain federal funds for the construction of the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering and administration costs (CE).

6. The interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

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NO. 27361
Filed with the Secretary of State
Date Filed: 02/04/05

Janice K. Brewer
Secretary of State

By: Darryl J. Graenwald

7. The work encompassed in this Agreement consists of roadway widening at the intersection of 83rd Avenue and Thunderbird Road to include auxiliary turn lane(s). The estimated costs are as follows:

TRACS No. SS524 01C

*** Total Estimated Cost of the Project** **\$1,405,831.00**

Federal Aid Funds @ 94.3% of 600,000.00 (cap) **\$ 565,800.00**

City Funds @ 5.7% of 600,000.00 (cap) **\$ 34,200.00**

Estimated City Funds @ 100% (difference between total cost and cap) **\$ 805,831.00**

Total Estimated City Funds \$ 840,031.00

***(Includes 15% CE and 5% project contingencies)**

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Be the authorized agent for the City, and all at City's expense, to perform certain work and prepare certain documents required by the FHWA to qualify certain highway, bridge and railroad grade crossing projects for and to receive federal funds. Such work may consist of, but is not specifically limited to, the review and approval of the City prepared environmental documents, the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way related activities (when specifically authorized by, for and on behalf of the City, and at no cost to the State) and such other related tasks essential to the achievement of the objective of this Agreement.

b. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

c. If such project is approved for construction by FHWA and the funds are available for construction, hereby agree to be the authorized agent for the City. With the aid and consent of the City and the FHWA, the State will proceed to advertise for, receive and open bids, and subject to the concurrence of the City and the FHWA, enter into a contract with a firm on behalf of the City to whom the award is made for the construction of the project. Such project to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the City and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation.

d. Enter into a Project Agreement with FHWA on behalf of the City covering the work encompassed in said construction contract and will request the maximum federal funds available, including construction engineering and administration costs. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

e. Not be obligated to maintain said project; should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

f. Should unforeseen conditions or circumstances increase the cost of said work such that a change in the extent or scope of the work called for in this Agreement become necessary, the State shall not be obligated to incur any expenditure in the project.

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2. The City will:

a. If such project is approved for construction by FHWA and the funds are available for construction, hereby designate the State as authorized agent for the City. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Agree the cost of the analysis and works covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed and determined by FHWA.

c. Prior to the solicitation of bids, agree to deposit funds with the State in an amount equal to the difference between the total cost of the work provided for in this Agreement and the amount of federal aid (capped) received.

d. Acquire the necessary rights-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bid.

e. Remove from the proposed rights-of-way all obstruction, non-construction related or unauthorized encroachments of whatever nature, either above or below the surface of the roadway and hereby certifies that all obstructions and unauthorized encroachments have been or will be removed therefrom, prior to the start of construction.

f. Not permit or allow any encroachments, except those authorized by permit, franchise or license, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention is to be borne by the City.

g. Upon completion of construction, be responsible to provide for, at its own costs and as an annual item in its budget, proper maintenance to the work described in this Agreement under section 1.7.

h. Should unforeseen conditions or circumstances increase the cost of said work such that a change in the extent or scope of the work called for in this Agreement becomes necessary, the City shall be obligated to incur and will pay for said increased costs.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

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2. The cost of the construction and construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

3. This terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project and related deposits or reimbursement, except any provisions for maintenance by the City shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the City, the State shall in no way be obligated to maintain said project.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds. Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue Mail Drop 616E
Phoenix, AZ 85007
FAX: (602) 712 7424

City of Peoria
Public Works Department -
Engineering Division
ATTN: Assistant City Engineer
8401 W. Monroe Street
Peoria, Arizona 85345

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11. Pursuant to Arizona Revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF PEORIA

STATE OF ARIZONA
Department of Transportation

By

JOHN C. KEEGAN
Mayor

By

SUSAN TELLEZ
Contract Administrator

ATTEST

By

MARY JO KIER
City Clerk



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19Oct2004-IH

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RESOLUTION NO. 05-19

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PEORIA, ARIZONA, ADOPTING A RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA FOR ACQUISITION OF FEDERAL FUNDS FOR CONSTRUCTION OF THE ROADWAY WIDENING AT 83RD AVENUE AND THUNDERBIRD ROAD.

WHEREAS, the City of Peoria Mayor and City Council are authorized by Title 9, Chapter 2, Article 4, Section 9-276 (1) to lay out and establish or otherwise improve streets, alleys, avenues, sidewalks, etc. and by Title 11, Chapter 7, Section 11-951 *et seq.* to enter into intergovernmental agreements with other governing bodies for services or joint exercise of powers; and

WHEREAS, the City desires to enter into an intergovernmental agreement with the State of Arizona for the acquisition of federal funds for the use and benefit of the City for roadway widening at 83rd Avenue and Thunderbird Road; and

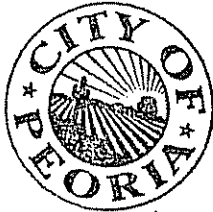
WHEREAS, the City is willing in order to obtain such federal funds for the construction of the 83rd Avenue and Thunderbird Road project to provide City matching funds; and

WHEREAS, by the City entering into the intergovernmental agreement with the State of Arizona the public interest will best be served.

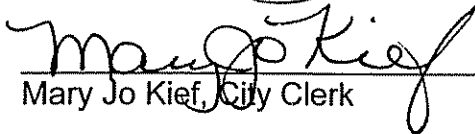
THEREFORE, BE IT RESOLVED that the Mayor and City Council of the City of Peoria, Arizona approves and adopts this Resolution to enter into an intergovernmental agreement with the State of Arizona for the acquisition of federal funds for construction of the roadway widening at 83rd Avenue and Thunderbird Road.

Resolution No. 05-19
83rd Ave. & T-bird Widening Project
January 18, 2005
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PASSED AND APPROVED by the Mayor and City Council of the City of Peoria,
Arizona this 18th day of January, 2005.



ATTEST:


Mary Jo Kief, City Clerk


John C. Keegan, Mayor

APPROVED AS TO FORM:

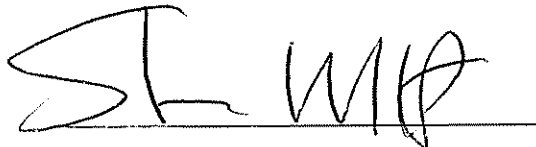

Stephen M. Kemp, City Attorney

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APPROVAL OF THE CITY OF PEORIA ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF PEORIA, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 19th day of January, 2005.

A handwritten signature in black ink, appearing to read "SLMHP", written over a horizontal line.

STEPHEN M. KEMP, CITY ATTORNEY

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1550TRN (**JPA 04-122**), an Agreement between public agencies (i.e., The State of Arizona and The City of Peoria), has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: January 31, 2005

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis".

Susan E. Davis
Assistant Attorney General
Transportation Section